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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2011–0088; 91200–1231–9BPP]

RIN 1018–AX98

Migratory Bird Permits; States Delegated Falconry Permitting Authority; Technical Corrections to the Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The States of Indiana, Iowa, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Tennessee, Virginia, and Wyoming have requested that we delegate permitting for falconry to the State, as provided under our regulations. We have reviewed regulations and supporting materials provided by these States, and have concluded that their regulations comply with the Federal regulations. We change the falconry regulations accordingly. This rule also makes certain nonsubstantive editorial changes to correct minor errors and to clarify the regulations.

DATES: This rule is effective January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service, published a final rule in the Federal Register on October 8, 2008 (73 FR 59448), to revise our regulations governing falconry

in the United States. These regulations are found in title 50 of the Code of Federal Regulations (CFR) at § 21.29. The regulations provide that, when a State meets the requirements for operating under the regulations, falconry permitting must be delegated to the State.

The States of Indiana, Iowa, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Tennessee, Virginia, and Wyoming have submitted revised falconry regulations and supporting materials and have requested to be allowed to operate under the revised Federal regulations. We have reviewed the regulations administered by these States and have determined that their regulations meet the requirements of 50 CFR 21.29(b). According to the regulations at § 21.29(b)(4), we must issue a rule to add a State to the list at § 21.29(b)(10) of approved States with a falconry program. Therefore, we change the Federal regulations accordingly, and a Federal permit will no longer be required to practice falconry in the States of Indiana, Iowa, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Tennessee, Virginia, and Wyoming beginning January 1, 2012.

In addition, to conform with the provisions of the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), we change wording in 50 CFR 21.29(a)(1)(ii).by replacing the word “used” with the words “taken from the wild.”

We also make three nonsubstantive improvements to the falconry regulations in 50 CFR 21.29. Paragraph (c)(1) is not needed because the information in it is presented in paragraph (b)(10). We remove paragraph (c)(1). We also add paragraph (d)(1)(ii)(B)(3) to specify that an eyas raptor need not be kept in an indoor enclosure suitable for a flighted bird. Finally, we amend paragraph (f)(12)(i) to replace “flight feathers” with the

more precise “tail feathers and primary and secondary wing feathers.” We also make other nonsubstantive editorial changes to correct minor errors and to clarify the regulations.

Administrative Procedure

In accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), we are issuing this final rule without prior opportunity for public comment. Under the regulations at 50 CFR 21.29(b)(1)(ii), the Director of the U.S. Fish and Wildlife Service must determine if a State, tribal, or territorial falconry permitting program meets Federal requirements. When the Director makes this determination, the Service is required by regulations at 50 CFR 21.29(b)(4) to publish a rule in the **Federal Register** adding the State, tribe, or territory to the list of those approved for allowing the practice of falconry. On January 1st of the calendar year following publication of the rule, the Service will terminate Federal falconry permitting in any State certified under the regulations at 50 CFR 21.29.

This is a ministerial and nondiscretionary action that must be enacted shortly to enable the subject States to assume all responsibilities of falconry permitting by January 1, 2012, the effective date of this regulatory amendment. Further, the relevant regulation at 50 CFR 21.29 governing the transfer of permitting authority to these States has already been subject to public notice and comment procedures. Therefore, in accordance with 5 U.S.C. 553(b)(3)(B), we did not publish a proposed rule in regard to this rulemaking action because, for good cause as stated above, we found prior public notice and comment procedures to be unnecessary. In addition, per 5 U.S.C. 553(d)(1), we are making this rule effective in less than 30 days because this rule relieves a restriction: it

relinquishes Federal control of the falconry permitting program to the approved States.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

- a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.
- b. Whether the rule will create inconsistencies with other Federal agencies' actions.
- c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.
- d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. This rule delegates authority to States that have requested it, and those States have already changed their falconry regulations. This rule does not change falconers' costs for practicing their sport, nor does it affect businesses that provide equipment or supplies for falconry. Consequently, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of \$100 million or more. There are no costs to permittees or any other part of the economy associated with this regulations change.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete

with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

a. This rule will not “significantly or uniquely” affect small governments in a negative way. A small government agency plan is not required. The eight States affected by this rule applied for the authority to issue permits for the practice of falconry.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year. It is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. The States being delegated authority to issue permits to conduct falconry have requested that authority. No significant economic impacts are expected to result from the State regulation of falconry.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this rule under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires November 30, 2013. This regulation change does not add to the approved information collection. Information from the collection is used to document take of raptors from the wild for use in falconry and to document transfers of raptors held for falconry between permittees. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We evaluated the environmental impacts of the changes to these regulations, and determined that this rule does not have any environmental impacts. Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, we determined that these regulatory changes do not have a significant effect on the human environment.

Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 2, we conclude that the regulatory changes are categorically excluded because

they “have no or minor potential environmental impact” (516 DM 2, Appendix 1A(1)). No more comprehensive NEPA analysis of the regulations change is required.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with Tribes’ ability to manage themselves or their funds or to regulate falconry on Tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Action

Socioeconomic. This action will not have discernible socioeconomic impacts.

Raptor populations. This rule will not change the effects of falconry on raptor populations. We have reviewed and approved the State regulations.

Endangered and threatened species. This rule does not change protections for endangered and threatened species.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “insure that any action authorized, funded, or carried out... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). Delegating falconry permitting authority to States with approved programs will not affect threatened or endangered species or their habitats in the United States.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements,
Transportation, Wildlife.

For the reasons stated in the preamble, we amend subpart C of part 21, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

AUTHORITY: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 21.29 as follows:

a. In paragraph (a)(1)(ii), the second sentence, remove the word “used” and add in its place the words “taken from the wild”;

b. In paragraph (b)(10)(i), remove the word “or” immediately before the word “Washington”, add a comma immediately following the word “Washington”, and add, in alphabetical order to the list of States, the words “Indiana,” “Iowa,” “Nebraska,” “New Jersey,” “New Mexico,” “North Carolina,” “Ohio,” “Oregon,” “Tennessee,” “Virginia,” and “or Wyoming,”;

c. In paragraph (b)(10)(ii), remove the words “Indiana,” “Iowa,” “Nebraska,” “New Jersey,” “New Mexico,” “North Carolina,” “Ohio,” “Oregon,” “Tennessee,” “Virginia,” and “or Wyoming,” and add the word “or” immediately before the word “Wisconsin,”;

d. Remove paragraph (c)(1) and redesignate paragraphs (c)(2) through (c)(9) as paragraphs (c)(1) through (c)(8);

e. In newly redesignated paragraph (c)(2)(iii)(B), the second sentence, remove the words “paragraph (c)(3)(iv)” and add in their place the words “paragraph (c)(2)(iv)”;

f. In newly redesignated paragraph (c)(5), the third sentence, remove the words “paragraph (c)(3)” and add in their place the words “paragraph (c)(2)”;

g. In paragraph (d)(1)(ii)(B)(2), revise the second sentence, and add new paragraph (d)(1)(ii)(B)(3) to read as set forth below;

h. In paragraph (e)(3)(ii)(E), remove the paragraph designations (1), (2), (3), (4), (5), (6), and (7) and add in their place the paragraph designations (1), (2), (3), (4), (5), (6), and (7);

i. In paragraph (e)(3)(viii), the first sentence, remove the words “paragraph (c)(3)(iv)” and add in their place the words “paragraph (c)(2)(iv)”;

j. In paragraph (f)(12)(i), the first sentence, remove the words “flight feathers” and add in their place the words “tail feathers and primary and secondary wing feathers”.

§ 21.29 Falconry standards and falconry permitting.

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(d) * * *

(1) * * *

(ii) * * *

(B) * * *

(2) * * * Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and allow them to maintain healthy feathers.

(3) An eyas raptor may be kept in any suitable container or enclosure until it is capable of flight.

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Dated: November 4, 2011

Rachel Jacobson

Acting Assistant Secretary for Fish and Wildlife and Parks.

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